

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1742 of 1996

and

CIVIL REVISION APPLICATION No 1745 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BANWARILAL M GUPTA

Versus

NATHABHAI GOPALJI PATEL

Appearance:

MR RN SHAH for Petitioners

MR SUNIL C PATEL for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.R.JAIN

Date of decision: 22/01/97

ORAL JUDGEMENT

Rule. Mr. Sunil C.Patel waives service of rule.

Heard the learned Advocates.

Both these matters are disposed of by this common order as common question of law is involved.

In both these matters, the petitioners-original plaintiffs applied for appointment of Commissioner stating that despite interim injunction, original defendants, have made construction which amounts to disobedience of Court's order. In this background it is also stated that the petitioners have already moved for taking appropriate steps under Order 39 , Rule 2A of Civil Procedure Code. It is true that Commissioner cannot be appointed for collecting evidence while at the same time, there is no law which prevents the Commissioner from making local inspection of the site and prepare report which would provide an assistance for appreciating the evidence and resolving controversy in its proper perspective. In this matter, it is true that at the initial stage Commissioner was appointed to make local inspection, but is required to make inspection and prepare report which would assist the Court to decide the controversy(breach of order) in its proper perspective. The report of Commissioner would not be in the nature of creating evidence helping the petitioners-original plaintiffs to fortify the claim/relief in terms of which decree is prayed.

Mr. Sunil C. Patel has opposed this application stating that Commissioner cannot be appointed to collect evidence. As stated above, as regards the proposition of law no judgments are required to be cited as on facts the circumstances are different.

I have also perused the order. The learned Judge has not dealt with this aspect but has been weighed with the alleged conduct of the petitioner of delaying the proceedings. This ground alone cannot be considered for rejecting the application under Order 26 Rule 9 of the Code. In this case, it is true that the evidence of parties is about to be over. Merely because the evidence of parties is about to be over, there is no bar for appointing Commissioner for the reasons stated hereinabove.

In the light of the aforesaid discussion, petitions are allowed. Impugned order is set aside. The trial Court is directed to appoint Commissioner who shall visit the suit site and property and prepare Panchnama and sketch with regard to the existing situation. The petitioner shall initially deposit a sum of Rs.400/- in each of the suits towards the remuneration of the

Commissioner. The Commissioner is directed to submit his report alongwith sketch within a week from the date of his appointment. Application stands disposed of accordingly. Rule is made absolute.

sf-rrj